

**COMPLIANCE BOARD OPINION No. 94-4**

July 18, 1994

*Dr. Raymond F. Altevogt*

The Open Meetings Compliance Board has considered your complaint dated March 8, 1994 (received by the Board on April 7) concerning alleged violations of the Open Meetings Act by the City Council of Takoma Park and by certain advisory committees and subcommittees.

Your complaint alleges a pattern of noncompliance by the City Council. You assert that the City Council "has regularly gone into executive session without taking a vote of the council members. It has not clearly indicated under which one of the fourteen allowable, closed session topics it will meet. It does not keep required records of going into closed sessions. It has not included in the minutes of [the] next open meeting any actions taken at its closed sessions."

In addition, you complain that the City Council has appointed certain citizen committees to recommend code changes to the Council. These committees do not comply with the notice and record-keeping requirements of the Act, you allege, nor do the subcommittees formed by these committees. Your complaint cites as an example a closed meeting in December, 1993, of the "Subcommittee on Lead" of the Environmental Committee.<sup>1</sup>

Finally, you assert a possible violation of the Open Meetings Act with respect to a meeting of the City Council on February 8, 1994. At that meeting, your letter states, "the council authorized the mayor to sign a letter supporting a closing of a pedestrian bridge over the railroad." You suggest that the notice of the meeting, which included a reference to the bridge using a name unfamiliar to you, failed to apprise the public adequately of this agenda item.

In a timely response on behalf of the City Council and the committees, Susan Silber, Esquire, the Corporation Counsel, asserts that the general allegation in the complaint of a pattern of Open Meetings Act violations "is false. The Council has been very concerned with ensuring that meetings are announced and conducted in accordance with the Open Meetings Act. In fact,

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<sup>1</sup> Your complaint also mentions your difficulty in obtaining the telephone numbers of the members of this subcommittee. This matter is not encompassed by the Open Meetings Act and therefore is beyond the jurisdiction of the Compliance Board.

on several occasions over the last three years, Council deliberations that could have been conducted in executive session were not, in the interest in providing as much information as possible about Council actions to Takoma Park residents."

Ms. Silber has supplied the Compliance Board with the form used by the City Council to satisfy the requirement in §10-508(d)(2)(ii) that the presiding officer "make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." If the City Council uses this form, it complies with the "written statement" requirement of the Act.

Ms. Silber's letter acknowledges that the past practices of the City Council did not fully comply with the requirement in §10-509(c)(2) that the minutes of a public body's open session next following a closed session contain certain information about the closed session. Ms. Silber states that "[t]he Council has recently become aware of the deficiency and has addressed it by expanding the minutes." She included examples of minutes from recent closed sessions of the City Council, and the Compliance Board believes that these minutes comply with the requirement in §10-509(c)(2).

With respect to your allegation that the "Subcommittee on Lead" held a closed meeting with the Mayor and other elected officials, Ms. Silber responded that this two-member subcommittee (the formal name of which is apparently the Toxics and Public Health Subcommittee) "made a presentation to the full Committee of the Environment at a regularly scheduled meeting (on December 12, 1993) which the Mayor and some city staff members also attended. Dr. Altevogt was advised of the time and place of the meeting and invited to attend, but he chose not to do so. Later, on February 22, 1994, that same committee (The Committee of the Environment) presented its report on lead strategy to the full Council at a regular work session." Ms. Silber requests the Board's general guidance on the application of the Act's notice requirements to these various committees and subcommittees.

As we understand the situation, the full committees, comprising Takoma Park residents with expertise and interest in a particular subject matter, are appointed by resolution of the City Council. Therefore, the committees are "public bodies" generally subject to the notice requirements of the Act.<sup>2</sup> In particular, each committee is required to give written notice reasonably in advance of a meeting, including the date, time, and place of the meeting. §10-506(a) and (b). The Act is quite flexible, however, in allowing a range of methods for the giving of notice. Indeed, the Act allows notice by "any reasonable method ..." §10-506(c)(4).

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<sup>2</sup> The term "public body" includes an entity that is created by a "rule, resolution, or bylaw." §10-502(h)(1)(ii)5.

Ms. Silber indicates that each committee establishes a regular day, time, and location of its meetings and that "[t]his information is publicly available and is additionally announced in the City Newsletter, but is not always re-announced before each meeting." Although the Compliance Board believes that the use of the City Newsletter to announce a future schedule of meetings is itself a reasonable method of notice, it does not appear to satisfy the requirement that notice be given in advance of each meeting. The wording of §10-506(a) is as follows: "Before meeting in a closed or open session, a public body shall give reasonable advance notice of *the* session." This language suggests to the Compliance Board that particularized notice of each meeting is required. As time goes on, members of the public are likely to forget the contents of an initial notice that announces an entire series of meetings.

The Compliance Board suggests that the initial notice in the City Newsletter be augmented with posted notice of the upcoming schedule of meetings of the committees. If this method of notice were itself announced in the City Newsletter, it would satisfy the notice requirement of the Act. *See* §10-506(c)(iii). Any changes in the date or time of a meeting could be interlineated on the posted notice.

With respect to the subcommittees, there is no indication that they are created by any means other than informal action of the committees. Hence, the subcommittees do not appear to be "public bodies," and therefore the notice requirements of the Act do not apply to their meetings.

The final matter in your complaint concerned the adequacy of notice of the item regarding demolition of a bridge over a railroad. As noted above, notice of a meeting is to "include the date, time, and place of the session." §10-506(b)(2). The Act contains no requirement of a specification of the agenda items anticipated for discussion or action at a meeting. Hence, there was no violation of the Act, even if the reference to the bridge on the agenda might not have been sufficient to alert members of the public to the issue.<sup>3</sup>

In summary, the Compliance Board finds that the current practices of the Takoma Park City Council comply with the procedural requirements of the Open Meetings Act. The Compliance Board further finds that, in order to comply with the Act, the committees formed pursuant to resolutions of the City Council should post a notice that would permit a member of the public, by consulting the notice, to ascertain the time, place, and location of any particular meeting of the committee. Subcommittees of the committees, however, are not covered by the Act. Finally, the Compliance Board finds no violation of the Act with respect to the notice of the City Council's meeting of

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<sup>3</sup> Ms. Silber's letter states "for the record" that the City Council "did not take a position on whether there should be a bridge at that location or not, but rather that the City had no objection to the current, extremely unsafe structure being torn down by the Washington Metropolitan Area Transit Authority and Montgomery County. It has been, and continues to be, the City's position that it is not financially responsible for the maintenance, demolition, or replacement of the bridge on that site."

February 8, 1994, as it related to action concerning the demolition of a certain bridge.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler Webb